

BEFORE
THE PUBLIC SERVICE COMMISSION OF
SOUTH CAROLINA
DOCKET NO. 2020-275-S

IN RE:	Application of Condor Environmental, Incorporated Requesting an Expansion of Its Existing Sewer Service Area to Include Certain Portions of Anderson County and Saluda County and Approval of Agreement (Request for Expedited Review))))))))	RESPONSE TO PETITION TO TERMINATE OR LIMIT THE SCOPE OF INSPECTION, AUDIT, OR EXAMINATION
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The Office of Regulatory Staff (“ORS”) hereby submits this response to the Petition of Condor Environmental, Incorporated (“Condor” or “Company”) to Terminate or Limit the Scope of Inspection, Audit or Examination (“Petition”). The Petition should be denied because ORS cannot investigate and report to the Public Service Commission of South Carolina (“Commission”) on Condor’s compliance if the scope of its discovery is limited as requested in the Petition.

INTRODUCTION

1. On August 13, 2020, Condor filed an application in Docket No. 2020-192-S to expand the Company’s service area to both the Carriage Hill (Anderson County) and Palmetto Pointe (Saluda County) subdivisions. ORS served discovery on Condor in that docket on September 3, 2020. On September 25, 2020, Condor filed a motion to withdraw its application in Docket No. 2020-192-S.
2. On November 19, 2020, Condor filed an Amended Application (“Application”) in the present docket, Docket No. 2020-275-S, requesting Commission approval for an expansion of its existing service area to include portions of Anderson and Saluda Counties and approval of agreements. In the present Motion filed in this docket, Condor acknowledges that the Company currently provides service to eight (8) customers in Carriage Hills subdivision without Commission approval as required under S.C. Code Ann. §58-5-210.

3. In paragraph 3 of the Application, Condor states that the Company entered into an agreement with the developer of Carriage Hill on June 7, 2018 to provide sewer service to Carriage Hill. Condor therefore entered into an agreement with the developer for Carriage Hills more than two years prior to filing its Application for Commission approval to expand the existing sewer service area and approve the said agreement. This is in direct violation of S.C. Code Ann. Reg. 103-541 which specifically requires that “[n]o utility shall execute or enter into any agreement or contract...without first submitting said contract in form to the commission and the ORS and obtaining approval of the commission.”
4. Condor has repeatedly expanded its sewer service area without first obtaining Commission approval. In Docket No. 2012-315-S, Condor acknowledged the Company provided sewer service and charged customers for sewer service in multiple subdivisions without first obtaining Commission approval to expand Condor’s service area.
5. Condor filed a Motion to Allow Service on a Provisional Basis (“Motion”) in Docket 2020-275-S on November 23, 2020. In this Motion, Condor requested Commission approval to operate the sewer systems in both the Palmetto Pointe (Saluda County) and Carriage Hill (Anderson County) subdivisions on a provisional basis.
6. By Order 2020-792 dated December 2, 2020 and Hearing Officer Directive 2020- 124-H issued on December 4, 2020, the Commission instructed ORS to provide responses or a status report to the Application and Motion of Condor in Docket 2020-275-S by December 14, 2020. In the Directive the Commission stated that “the results of any discovery or review of Condor and its Application by ORS would be beneficial information for the record.”
7. In its effort to respond to Commission Order 2020-792, ORS served discovery on Condor in the form of a First Request for Books, Records, and other Information (“Request”) pursuant to S.C. Code Ann. §§ 58-4-55 and 58-5-230 on December 11, 2020. ORS requested that Condor respond within fifteen (15) business days. Condor has not yet responded to this Request. ORS filed an initial Report with the Commission in this docket on December 14, 2020.
8. On December 18, 2020, Condor filed its Petition to Terminate or Limit the Scope of Inspection, Audit, or Examination, which is the subject of this Response.

ORS' DISCOVERY REQUESTS ARE RELEVANT TO CONDOR'S APPLICATION

9. The information requested is relevant to the Application filed in this docket. If granted, Condor's request that it be excused from replying to Questions 1-16 to 1-19 and 1-20 through 1-26 of the Request would materially limit ORS from performing a review of Condor's past and ongoing compliance with all Commission Orders, Rules and Regulations. Questions 1-16 through 1-19 are aimed at clarifying certain responses provided by Condor in its 2019 Annual Report relating to Contributions in Aid of Construction ("CIAC"), Accumulated Depreciation, Utility Plant in Service ("UPIS"), and federal and state tax expenses. Questions 1-16 through 1-19 are in fact questions left unanswered from ORS's First and Continuing Request for Books, Records, and other Information served on Condor in Docket No. 2020-192-S on September 3, 2020. Previously left unanswered, these questions had at no time been objected to by the Company until the Company's current Petition was filed with the Commission on December 18, 2020.

10. The Application in this docket specifically identifies that CIAC will be paid to Condor from each developer. Additionally, numerous previously approved contracts for other subdivisions served by Condor indicate that Condor has received a significant portion of its UPIS in the form of CIAC. However, Condor's 2019 Annual Report indicates that none of the Company's UPIS is CIAC. Condor's 2019 Annual Report also indicates the Company does not appear to be tracking its Accumulated Depreciation and that it did not incur any federal or state income tax expenses. Commission Regulation 103-517 requires that "[a]ll books and records of the utility shall be maintained in accordance with the NARUC Uniform System of Accounts for Class A, B and C Sewerage Utilities to the extent applicable" and further that "(f)ull cooperation will be provided by the utility during rate adjustment audits or compliance audits conducted by ORS or its representatives.

11. The Company's accurate accounting treatment of its UPIS, CIAC, Accumulated Depreciation, and other accounts resulting from this Application is pertinent to this proceeding and not, as Condor claims, "unrelated to this application" or "way beyond the scope of this proceeding." Condor's overall compliance with the Commission's rules and regulations is also pertinent to its current request to expand its service territory.

12. Questions 1-20 through 1-26 relate to ORS's ongoing billing review of Condor. These questions are pertinent to ORS' review of Condor's current operations in South Carolina and whether it is operating and billing in compliance with the Commission's rules and regulations.

CONDOR'S REQUEST TO TERMINATE OR LIMIT THE SCOPE OF ORS' DISCOVERY REQUESTS SHOULD BE DENIED AS SUCH DISCOVERY WAS SERVED IN FURTHERANCE OF A COMMISSION ORDER

13. ORS maintains that the information requested is relevant to the Application filed in this docket and that its requests were further served in order to provide the information requested of ORS by the Commission in Order No. 2020-792. Order No. 2020-792 specifically requested that ORS provide it with information regarding ORS's review of Condor and its Application. ORS cannot provide the Commission with "the results of any discovery" if Condor is permitted to avoid answering the discovery propounded by ORS. Relevant portions of that Order provide that:

a. "In August of this year, Condor filed a similar Application with the Commission relative to Carriage Hill and Palmetto Pointe subdivisions. We had questions and Condor timely responded. **The Office of Regulatory Staff began discovery prior to the withdrawal of that prior Application.**" {emphasis added}

b. "I believe that the results of any discovery or review **of Condor** and its Application by ORS **would be beneficial information for the record.**" {emphasis added}

c. "I move that **we ask for ORS to provide** the results of its discovery and/or review **of Condor** and its Application..." {emphasis added}

ORS ACTED WITHIN ITS STATUTORY AUTHORITY TO REVIEW CONDOR'S ACCOUNTING RECORDS AND BILLING STATEMENTS

14. ORS has the statutory authority to review Condor's accounting records and billing statements under S.C. Code Ann. §58-4-55, which provides that ORS, "in accomplishing its responsibilities under Section 58-4-50, may require the production of books, records, and other information . . ."

15. South Carolina Code Ann. §58-4-50 provides in part that:

a. (A)(2): "when considered necessary by the Executive Director of the Office of Regulatory Staff and in the public interest, make inspections, audits, and examinations of public utilities regarding matters within the jurisdiction of the commission. The regulatory staff has sole responsibility for this duty but shall also make such inspections, audits, or examinations of public utilities as requested by the commission[.]"

b. (A)(6): “upon request by the commission, make studies and recommendations to the commission with respect to standards, regulations, practices, or service of any public utility pursuant to the provisions of this title[.]”

16. ORS’s information requests are not “arbitrary, capricious, unnecessary, unduly burdensome, or unrelated to the public utility’s regulated operations.” S.C. Code Ann. §58-4-55(B)(1). ORS has requested information which it considers necessary for a full review of Condor’s Application and in order to comply with the Commission’s Order requesting that ORS conduct discovery and provide it with “the results of its discovery and/or review.” Condor’s Petition, if granted, would impair ORS’s ability to comply with the Order of the Commission, would prevent ORS from conducting discovery that is proper under the Rules of Civil Procedure, and would infringe upon ORS’s statutory duties and authority.

17. Additionally, S.C. Code Ann. §58-5-230 provides that “The books and accounts of all public utilities shall be subject to the examination of the regulatory staff at any time.” This is not, and should not be, less true where a utility requests to expand service, particularly under the circumstances relating to this docket.

CONCLUSION

WHEREFORE, ORS requests the Commission deny Condor’s Petition to Terminate or Limit the Scope of Inspection, Audit or Examination. The Petition should be denied based on both Commission Order No. 2020-792 and the broad authority afforded ORS to investigate the books and finances of regulated utilities. ORS cannot investigate and report to the Commission on Condor’s compliance if the scope of its discovery is limited as requested in the pending Petition.

Additionally, ORS is not, as alleged by the Petitioner “delay(ing) the Commission’s prompt consideration of this application” as there are multiple intervenors seeking to be involved in this docket which may raise additional issues for the Commission’s consideration. Condor further cannot complain of delay where it has requested and received a general stay in this case. The Commission should not rush to judgement without a full consideration of both the application and Condor’s compliance with Commission orders, regulations and statutes. ORS respectfully requests that the Commission direct Condor to answer ORS’s discovery requests in full.

s/ Jeffrey M. Nelson

Jeffrey M. Nelson, Esquire

Alexander W. Knowles, Esquire

OFFICE OF REGULATORY STAFF

1401 Main Street, Suite 900

Columbia, South Carolina 29201

Phone: (803) 737-0823

Fax: (803) 737-0801

E-mail: jnelson@ors.sc.gov

E-mail: aknowles@ors.sc.gov

Columbia, South Carolina

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